

## NOTICE OF INTENT

Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Hazardous Waste Division

Under the authority of the Louisiana Environmental Quality Act, La. R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 13, 19, 37, 43, and 49 (Log #HW052).

This rule seeks to make Louisiana's regulations on hazardous waste financial assurance to be equivalent to federal regulations (40 CFR 264.140-151 and 265.140-150). A review of state regulations for financial assurance showed that they were inconsistent with the federal regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A public hearing will be held on July 25, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW052. Such comments must be received no later than August 1, 1997, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Post Office Box 82282, Baton Rouge, LA 70884 or to fax number (504) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. You may contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW052.

This proposed regulation is available for inspection at the following DEQ office locations from 8:00 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, 4th floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508. This regulation is also available on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

H. M. Strong  
Assistant Secretary

### Title 33

#### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 1. Department of Environmental Quality-Hazardous Waste Chapter 1. General Provisions and Definitions

#### §105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste", appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A-D.1]

2. A generator who temporarily stores hazardous wastes in an environmentally safe container or tank, or containment building (see LAC 33:V.1109.E) on-site for 90 days or less is exempt from the permitting regulations except for the requirements of LAC 33:V.Chapter 11. Generators must record the date that storage began by proper marking of the container or by other methods acceptable to the administrative authority. Such temporary storage shall be in an environmentally sound manner in compliance with the technical requirements of LAC 33:V.1505, 1509.A, 1513-1517, 1525, and as applicable, with LAC 33:V.1903.A and B, 1905-1913, 1919, 2103-2109.C, and 2111-2115.

\* \* \*

[See Prior Text in D.3-M.10]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste

Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:\*\*

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality-Hazardous Waste

Chapter 13. Transporters

§1305. Transfer Facility Requirements

\* \* \*

[See Prior Text in A]

B. If hazardous wastes from different generators or separate wastes from the same generator become mixed after being accepted by the transporter, the transporter shall also comply with applicable federal or state generator standards unless the transporter shows that the information on the manifests still identifies the hazardous waste.

\* \* \*

[See Prior Text in C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), repromulgated LR 18:1256 (November 1992), amended LR 23:\*\*.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality-Hazardous Waste  
Chapter 19. Tanks

§1915. Closure and Post-closure Care

\* \* \*

[See Prior Text in A-B]

C. If an owner or operator has a tank system that does not have secondary containment that meets the requirements of LAC 33:V.1907.B ~~and~~ = F and is not exempt from the secondary containment requirements in accordance with LAC 33:V.1907.G, then:

\* \* \*

[See Prior Text in C.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 23:\*\*.

### Title 33

#### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 1. Department of Environmental Quality-Hazardous Waste Chapter 37. Financial Requirements

#### Subchapter A. Closure Requirements

#### §3707. Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. Under this Part, the owner or operator must choose from the options as specified in LAC 33:V.3707.A-F, which choice the administrative authority must find acceptable based on the application and the circumstances.

\* \* \*

[See Prior Text in A-A.9]

10. After beginning partial or final closure, an owner or operator, or any other person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the administrative authority. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for partial or final closure activities, the administrative authority will instruct the trustee to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the administrative authority has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with ~~LAC 33:V.3707~~ this Section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the administrative authority does not instruct ~~the~~ the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

\* \* \*

[See Prior Text in A.11-C.2]

3. The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust must meet the

requirements specified in ~~IAC 33:V.3707~~ Subsection A of this Section except that:

\* \* \*

[See Prior Text in C.3.a-D.5]

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in ~~IAC 33:V.3707.A~~ Subsection G of this Section .

\* \* \*

[See Prior Text in D.7-D.8]

9. If the owner or operator does not establish alternate financial assurance as specified in this Part, and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the administrative authority of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit ~~, beyond the current expiration date, the administrative authority will draw on the letter of credit~~. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Part and obtain written approval of such assurance from the administrative authority.

\* \* \*

[See Prior Text in D.10-F.1.a]

i. ~~either two of the following three ratios:~~ a ratio of total liabilities to net worth less than 1.5, 2.0; or a ratio of the sum of net income plus depreciation, depletion, and amortization minus \$10 million to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. ~~iii. tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus of at least \$10 million; and~~

iv. ~~iv.~~ assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates



~~and any other obligations covered by a financial test~~ the current plugging and abandonment cost estimates.

\* \* \*

[See Prior Text in F.1.b-F.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

~~iii. tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus~~ of at least \$10 million; and

~~iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test~~ the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in ~~LAC 33:V.3707.F.1~~ Subsection F.1 of this Section refers to the cost estimates required to be shown in ~~Paragraphs 1- 74~~ of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in Subsection F.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f)

\* \* \*

[See Prior Text in F.3-F.10.b]

c. If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the administrative authority within 90 days after receipt by the owner or operator and the administrative authority of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance, ~~and financial test and guarantee, except that the financial test and guarantee may not be combined~~. The mechanisms must be as specified in ~~LAC 33:V.3707.~~ Subsections A, B, D, and E

of this Section , ~~and F~~, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

\* \* \*

[See Prior Text in H-I]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), LR 23:\*\*.

## **Subchapter B. Post-closure Requirements**

### **§3711. Financial Assurance for Post-closure Care**

The owner or operator of a facility hazardous waste management unit subject to ~~post-closure monitoring or maintenance requirements~~ the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in ~~LAC 33:V.3711~~ Subsections A-F of this Section , which choice the administrative authority must find acceptable based on the application and the circumstances.

\* \* \*

[See Prior Text in A-A.4]

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section or in LAC 33:V.4407 , his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and if annual payments were made according to specifications of this Subsection and LAC 33:V.4407, as applicable.

\* \* \*

[See Prior Text in A.6 - 12.a]

b. the administrative authority releases the owner or operator from the requirements of this ~~Part~~ Section in accordance with ~~LAC 33:V.3711.A.3~~ Subsection I of this Section.

\* \* \*

[See Prior Text in B-C.4.b]

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements, or will deposit the amount of the penal sum into the standby trust fund. 7

\* \* \*

[See Prior Text in C.6-E.8.b]

c. closure is ordered by the administrative authority or a U. S. District Court or other court that can exercise jurisdiction; or

\* \* \*

[See Prior Text in E.8.d-F.1.a]

i. ~~either two of the following three ratios:~~ a ratio of total liabilities to net worth less than ~~1.5, 2.0;~~ or a ratio of the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

~~iii. tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test, plus~~ of at least \$10 million; and

~~iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test~~ the current plugging and abandonment cost estimates.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

~~ii.~~ tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

~~iii.~~ tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test, plus of at least \$10 million; and

~~iv.~~ assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test, plus \$10 million the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in LAC 33:V.3707.F.1 refers to the cost estimates required to be shown in ~~Paragraphs 1- 7~~ 4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in LAC 33:V.3707.F.1 refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f).

\* \* \*

[See Prior Text in F.3-F.11.c]

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in ~~LAC 33:V.3711. Subsections A, B, D, and E of this Section, and F,~~ respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any

or all of the mechanisms to provide for post-closure care of the facility.

\* \* \*

[See Prior Text in H-I]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 14:791 (November 1988), LR 18:723 (July 1992), LR 23:\*\*.

#### **Subchapter D. Insurance Requirements**

##### **§3715. Liability Requirements**

\* \* \*

[See Prior Text in A-A.1.b]

2. An owner or operator may meet the requirements of this Section by passing a financial test or using the corporate guarantee for liability coverage as specified in Subsection S F and G of this Section.

\* \* \*

[See Prior Text in A.3-B.7.c]

C. Request for Variance. If an owner or operator can demonstrate to the satisfaction of the administrative authority that the levels of financial responsibility required by ~~LAC 33:V.3715.~~ Subsections A and B of this Section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the administrative authority. The request for a variance must be submitted to the administrative authority as part of the application under LAC 33:V.Chapter 3 5 for a facility that does not have a permit, or pursuant to the procedures for permit modification under LAC 33:V.Chapter 5 3 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the administrative authority's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The administrative authority may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the administrative authority to determine a level of financial responsibility other than that required by ~~LAC 33:V.3715.~~ Subsections A and B of this Section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under LAC 33:V.321.

\* \* \*

[See Prior Text in D-F.1.a]

i. ~~tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus \$10 million net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test~~; and

ii. tangible net worth of at least \$10 million; and

~~iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial~~ to be demonstrated by this test.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

ii. ~~tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus~~ of at least \$10 million; and

iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

~~iv. assets located in the United States amounting to either at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial~~ to be demonstrated by this test.

\* \* \*

[See Prior Text in F.2-3]

a. a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.E, LAC 33:V. 3707.F, 3711. E and F, and 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required;

\* \* \*

[See Prior Text in F.3.b-K]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:486 (April 1993), amended LR 23:\*\*.

## **Subchapter F. Financial and Insurance Instruments**

### **§3719. Wording of the Instruments**

A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### 1.

##### TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_\_" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

\* \* \*

[See Prior Text in A.Trust Agreement.Section 1- Section 1.(d)]

## Section 2. Identification of Facilities and Cost Estimates

This Agreement pertains to the facilities and cost estimate ~~ds~~ identified on attached Schedule A ~~7~~ [on Schedule A, for each facility list the ~~Hazardous Waste Facility~~ EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates , or portions thereof, for which financial assurance is demonstrated by this Agreement ~~1~~].

## Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party have access to the ~~f~~Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. ~~7~~ [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank but for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document. ~~7~~ 1 Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 4-Section 5]

## Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the ~~f~~Fund and keep the ~~f~~Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this part. In investing, reinvesting, exchanging, selling, and managing the ~~f~~Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:



A. securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. the Trustee is authorized to invest the ~~f~~Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the ~~f~~Federal or ~~s~~State government; and

C. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

A. to transfer from time to time any or all of the assets of the ~~f~~Fund to any common, commingled, or collective trust fund created by the Trustee in which the ~~f~~Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

B. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. to register any securities held in the ~~f~~Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit

or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the fFund;

D. to deposit any cash in the fFund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the fFederal or ~~s~~State government; and

E. to compromise or otherwise adjust all claims in favor of or against the fFund.

#### Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fFund and all brokerage commissions incurred by the fFund shall be paid from the fFund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the fFund.

#### Section 10. Annual ~~Evaluation~~ Valuation

The Trustee shall annually, at least thirty days prior to the anniversary date of establishment of the fFund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the fFund shall be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fFund. The failure of the Grantor to object in writing to the Trustee within ninety days after the statement has been furnished to the Grantor and the administrative authority shall constitute a conclusively binding assent by the Grantor, barring the Grantor ~~from~~ from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 11-Section 12]

#### Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until

the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the ~~f~~Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the administrative authority, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this part shall be paid as provided in Section 9.

\* \* \*

[See Prior Text in A.Trust Agreement.Section 14-Section 20]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized ~~and~~ their corporate seals to be hereunto affixed ~~+~~ and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719.A.1 as such regulations were constituted on the date first above written.

WITNESSES: GRANTOR:

By:

Its: \_\_\_\_\_

(SEAL)

TRUSTEE:

By: \_\_\_\_\_

Its: \_\_\_\_\_

(SEAL)

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

NOTARY PUBLIC

2. ~~{Note:—~~The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3707.A.2 ~~and~~ or 3711.A.2 ÷ or 4403 A.2 or 4407.A.2 +.

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

BE IT KNOWN, that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the \_\_\_\_\_, a corporation, for the consideration, uses and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the \_\_\_\_\_ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who have hereunto subscribed their names as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ NOTARY PUBLIC

B. Payment Bond. A surety bond guaranteeing payment into a trust fund, as specified in LAC 33:V.3707.B or 3711.B or 4403.B or 4407.B, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

# FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

~~Hazardous Waste Facility~~ EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Resource Conservation and Recovery Act (RCRA) as amended ~~(RCRA)~~ and the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the hazardous waste management facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or interim status; and

WHEREAS, said Principal shall establish a standby trust fund as is required by LAC 33:V.Chapter 37 when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin final

closure is issued by the Secretary, or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:V.Chapter 37, and obtain written approval from the administrative authority of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the administrative authority from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the administrative authority.

The Surety(ies) hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:V.Chapter 37, and the conditions of the Hazardous Waste Facility permit so that it guarantees a new closure and/or post-closure amount, provided

that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety(ies), that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:V.3719.B as such regulations were constituted on the date this bond was executed.

#### PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

#### CORPORATE SURETIES

[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability Limit: \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate Seal]  
[This information must be provided for each co-surety]  
Bond Premium:\$ \_\_\_\_\_

\* \* \*

[See Prior Text in C]

D. Letter of Credit. A letter of credit, as specified in LAC 33:V.3707.D or 3711.D or 4403.C or 4407.C must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality

P.O. Box 82263  
Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of U.S. dollars \$ \_\_\_\_\_ upon presentation of:

1. a sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the Secretary or his or her designated representative, together with;

2. a statement signed by the Secretary or his or her designated representative, reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Louisiana Environmental Quality Act, R.S. 30:2001, et seq."

This Letter of Credit is effective as of \_\_\_\_\_, 19 \_\_, and shall expire on \_\_\_\_\_, 19\_\_ [date at least one year later], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [\_\_\_\_\_, 19\_\_] and on each successive expiration date thereafter, unless, at least 120 days before the then current expiration date, we notify both you and [name of owner/operator] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [name of owner/operator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of owner/operator] in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:V.3719.D as such regulations were constituted on the date shown immediately below.

[Signature(s) and Titles of Official(s) of issuing institutions]

[DATE]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].



E. A certificate of insurance, as specified in LAC 33:V.3707.E or 3711.E ~~or 4403.D or 4407.D,~~ must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer

(herein called the "Insurer"):

Name and Address of Insured

(herein called the "Insured"):

Facilities Covered: [List for each facility: ~~The Hazardous Waste Facility~~ EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of LAC 33:V.3707.E ~~and~~ 3711.E, 4403.D, and 4407.D as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:V.3719.E as such regulations were constituted on the date shown immediately below and that Insurer is authorized to conduct insurance business in the State of Louisiana.

[Authorized signature for Insurer]

[Name of person signing][Title of person signing]  
 Signature of witness or notary: \_\_\_\_\_[Date]

F. Closure Guarantee. A letter from the chief financial officer, as specified in LAC 33:V:3707.F.3 or 3711.F.3 or 4403.E.3 or 4407.E.3 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

Secretary  
 Louisiana Department of Environmental Quality  
 P.O. Box 82263  
 Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in LAC 33:V.Chapter s 37 and 43.

[Fill out the following ~~two~~ five paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, ~~and~~ address, and current closure and/or post-closure cost estimates. Identify each cost as to whether it is for closure or post-closure.]

1. ~~The This~~ This firm ~~identified above~~ is the owner or operator of the following facilities for which financial assurance for closure ~~and/or~~ post-closure costs is being demonstrated through the financial test specified in LAC 33:V.Chapter s 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility :\_\_\_\_\_.

2. ~~The This~~ This firm ~~identified above~~ guarantees, through the guarantee specified in LAC 33:V.Chapter s 37 and 43, financial assurance for closure ~~and/or~~ post-closure costs at the following facilities owned or operated by the following guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility :\_\_\_\_\_.  
 The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent

corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_. [Attach a written description of the business relationship or a copy of the contract establishing each relationship to this letter].

~~—[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]—~~

~~—1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in LAC 33:V.Chapter 37. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_~~

~~—2. This firm guarantees, through the guarantee specified in LAC 33:V.Chapter 37, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_~~

3. In states other than Louisiana, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapter s 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism specified in LAC 33:V.Chapter s 37 and 43 and/or equivalent or substantially equivalent state mechanisms. The current closure and/or

post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_

~~[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs.]~~

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144 ~~and is assured through a financial test~~. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

~~6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under 40 CFR Part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: \_\_\_\_\_.~~

~~7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under 40 CFR Part 761 and is assured through a financial test. The amount of assurance required is shown for each facility: \_\_\_\_\_.~~

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure estimates ~~and other environmental costs to be assured~~ [total of all cost estimates shown in the ~~seven~~ five paragraphs above]: \$ \_\_\_\_\_

\*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]: \$ \_\_\_\_\_

\*3. Tangible net worth: \$ \_\_\_\_\_

\*4. Net worth: \$ \_\_\_\_\_

\*5. Current assets: \$ \_\_\_\_\_

\*6. Current Liabilities: \$ \_\_\_\_\_

7. Net working capital [line 5 minus line 6]:  
\$ \_\_\_\_\_

~~\*5.~~ \*8. The sum of net income plus depreciation, depletion, and amortization: \$ \_\_\_\_\_

~~\*6.~~ \*9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
7. <del>10.</del> Is line 3 <del>minus line 1</del> at least \$10 million?	_____	_____
8. <del>11.</del> Is line 2 <del>divided by line 4 less than 1.5</del> <u>3 at least six times line 1?</u>	_____	_____
9. <del>12.</del> Is line 5 <del>divided by line 2 greater than 0.1</del> <u>7 at least six times line 1?</u>	_____	_____
<del>*10.</del> *13. Is line 6 <del>greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?</del> <u>Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14.</u>	_____	_____
11. <del>14.</del> Does the firm answer YES to either of question 6 or 8, and question 7 and 10? <u>Is line 9 at least six times line 1?</u>	_____	_____

15. Is line 2 divided by line 4 \_\_\_\_\_  
less than 2.0? \_\_\_\_\_

16. Is line 8 divided by line 2 \_\_\_\_\_  
greater than 0.1? \_\_\_\_\_

17. Is line 5 divided by line 6 \_\_\_\_\_  
greater than 1.5? \_\_\_\_\_

## ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates ~~and other environmental costs to be assured~~ [total of all cost estimates shown in the ~~seven~~ five paragraphs above]: \$ \_\_\_\_\_

2. Current bond rating of most recent issuance of this firm and name of rating service: \_\_\_\_\_

3. Date of issuance of bond: \_\_\_\_\_

4. Date of maturity of bond: \_\_\_\_\_

\*5. Tangible net worth [if any portion of the closure and post-closure cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
7. Is line 5 <del>minus line 1</del> at least \$10 million?	_____	_____

8. Is line <del>6</del> <u>5</u> greater than six times line 1, <del>(required only if less than 90 percent of firm's assets are located in the U.S.)</del> ?	_____	_____
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*9. <u>Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10.</u>	_____	_____
--	-------	-------

10. <u>Is line 6 at least six times line 1?</u>	_____	_____
---	-------	-------

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.F as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

G. Liability Coverage Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3715.F or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 82263  
Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in LAC 33:V.Chapter s 37 or 43.

[Fill out the following paragraph regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "non-sudden" or "both sudden and non-sudden"] accidental occurrences is being demonstrated through the financial test specified in LAC 33:V.Chapter s 37 or 43.

The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapter s 37 or 43, liability coverage for [insert "sudden" or "non-sudden" or "both sudden and non-sudden"] accidental occurrences at the following facilities owned ~~and~~ or operated by the following: \_\_\_\_\_. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2)

owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or  
 (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following ~~four~~ five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_

2. The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_

3. In states other than Louisiana, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not



covered by such financial assurance are shown for each facility: \_\_\_\_\_

~~[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs.]~~

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under the applicable regulations of the Louisiana Department of Natural Resources and is assured through a financial test. The current closure cost estimates as required by LDNR are shown for each facility: \_\_\_\_\_

~~6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under 40 CFR Part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: \_\_\_\_\_.~~

~~7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under 40 CFR Part 761 and is assured through a financial test. The amount of assurance required is shown for each facility: \_\_\_\_\_.~~

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements under LAC 33:V.Chapters 37 and 43.]

#### PART A. LIABILITY COVERAGE FOR SUDDEN AND NON-SUDDEN OCCURRENCES

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used.]

#### ALTERNATIVE I

~~1. Sum of required sudden and non-sudden liability coverage~~  
Amount of annual aggregate liability coverage to be demonstrated :  
 \$ \_\_\_\_\_

\*~~2. Current assets:~~ \$ \_\_\_\_\_

\*~~3. Current liabilities:~~ \$ \_\_\_\_\_

\*~~4. Net working capital (line 2 minus line 3):~~ \$ \_\_\_\_\_

\*~~2~~ 5. Tangible net worth: \$ \_\_\_\_\_

\*~~3~~ 6. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
<del>4</del> <u>7. Is line 2 minus line 1 5 at least \$10 million?</u>	_____	_____
* <del>5</del> <u>8. Is line 3 greater than 4 at least six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?</u>	_____	_____
<del>6. Does the firm answer YES to both questions 4 and 5?</del> <u>9. Is line 5 at least six times line 1?</u>	_____	_____
<u>10. Are at least 90 percent of assets located in the U.S.? If not, complete line 11.</u>	_____	_____
<u>11. Is line 6 at least six times line 1?</u>	_____	_____

## ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_

2. Current bond rating of most recent issuance and name of rating service: \_\_\_\_\_

3. Date of issuance of bond: \_\_\_\_\_

4. Date of maturity of bond: \_\_\_\_\_

\*5. Tangible net worth: \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
7. Is line 5 <del>minus line 1</del> at least \$10 million?	_____	_____
*8. Is line 6 <del>greater than 5</del> at least six times line 1 <del>(required only if less than 90 percent of firm's assets are located in the U.S.)</del> ?	_____	_____
9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10.	_____	_____
10. Is line 6 at least six times line 1?	_____	_____

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

#### PART B. CLOSURE OR POST-CLOSURE CARE AND LIABILITY COVERAGE

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used.]

#### ALTERNATIVE I

1. Sum of current closure and post-closure cost estimates ~~and other environmental costs to be assured~~ (total of all cost estimates listed above): \$ \_\_\_\_\_

2. Amount of annual aggregate liability coverage to be demonstrated: \$ \_\_\_\_\_

3. Sum of lines 1 and 2: \$ \_\_\_\_\_

\*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6): \$ \_\_\_\_\_

\*5. Tangible net worth: \$ \_\_\_\_\_

\*6. Net worth: \$ \_\_\_\_\_

\*7. Current assets: \$ \_\_\_\_\_

\*8. Current liabilities: \$ \_\_\_\_\_

9. Net working capital (line 7 minus line 8): \_\_\_\_\_

\*7 10. The sum of net income plus depreciation, depletion, and amortization: \$ \_\_\_\_\_

\*8 11. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
9 12. Is line 5 <del>minus line 3</del> at least \$10 million?	_____	_____
10 13. <del>Is line 4 divided by line 6 less than 1.5</del> Is line 5 at least six times line 3 ?	_____	_____
11 14. <del>Is line 7 divided by line 4 greater than 0.1</del> Is line 9 at least six times line 3 ?	_____	_____
*12 15. <del>Is line 8 greater than six times line 3 (required only if less than 90 percent of firm's assets are located in the U.S.)?</del> Are at least 90 percent of assets located in the U.S.? If not, complete line 16.	_____	_____
13 16. <del>Does the firm answer YES to either question 10 or 11, and questions 9 and 12?</del> Is line 11 at least six times line 3?	_____	_____
17. Is line 4 divided by line 6 less than 2.0?	_____	_____
18. Is line 10 divided by line 4 greater than 0.1?	_____	_____
19. Is line 7 divided by line 8 greater than 1.5?	_____	_____

## ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates ~~and other environmental costs to be assured~~ (total of all cost estimates listed above): \$\_\_\_\_\_

2. Amount of annual aggregate liability coverage to be demonstrated: \$\_\_\_\_\_

3. Sum of lines 1 and 2: \$ \_\_\_\_\_

4. Current bond rating of most recent issuance and name of rating service: \_\_\_\_\_

5. Date of issuance of bond: \_\_\_\_\_

6. Date of maturity of bond: \_\_\_\_\_

\*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line):  
\$\_\_\_\_\_

\*8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ \_\_\_\_\_

	<u>YES</u>	<u>NO</u>
9. Is line 7 <del>minus line 3</del> at least \$10 million?	_____	_____
*10. Is line 8 <del>greater than</del> <u>7 at least six times line 4</u> <del>(required only if less than 90 percent of firm's assets are located in the U.S.)</del> ?	_____	_____
11. <u>Are at least 90 percent of assets located in the U.S.? If not, complete line 12.</u>	_____	_____
12. <u>Is line 8 at least six times line 3?</u>	_____	_____

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.G as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]  
[Title]  
[Date]

\* \* \*

[See Prior Text in H-L.Bond Premium:\$]

#### M. Trust Agreement

1. A trust agreement, as specified in LAC 33:V.3715 and 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the state of " or "a national bank"], the "trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or non-sudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

#### Section 1. Definitions. As used in this Agreement:

- a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or non-sudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [up to \$45 million] per occurrence and \_\_\_\_\_ [up to \$210 million] annual aggregate for sudden accidental occurrences, exclusive of legal defense costs and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for non-sudden occurrences exclusive of legal defense costs, except that the Fund is not established for the benefit of third parties for the following:

a. Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

b. Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

c. Bodily injury to:

i. an employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(a). whether [insert Grantor] may be liable as an employer or in any other capacity; and

(b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in clauses i and ii above.

d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

e. Property damage to:

i. any property owned, rented, or occupied by [insert Grantor];

ii. premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

iii. property loaned to [insert Grantor];

iv. personal property in the care, custody, or control of [insert Grantor];

v. that particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing

operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

\* \* \*

[See Prior Text in M.l.Trust Agreement.Section 4 - Section 20]

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719 as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3715 or 4411.

State of Louisiana

Parish of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of



Directors of said corporation; and that she/he signed her/his name thereto by like order.

Witness:

\_\_\_\_\_

THUS DONE AND SIGNED before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\* \* \*

[See Prior Text in N-N.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), LR 23:\*\*.

## Title 33

## ENVIRONMENTAL QUALITY

## Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality – Hazardous Waste  
Chapter 43. Interim Status**Subchapter E. Groundwater Monitoring****§4375. Recordkeeping and Reporting**

\* \* \*

[See Prior Text in A]

1. keep records throughout the active life of the facility of the analyses required in LAC 33:V.4371.C and E, the associated groundwater surface elevations required in LAC 33:V. ~~4369~~ 4371.F, and the evaluations required in LAC 33:V.4373.B, and, for disposal facilities, throughout the post-closure care period as well; and

\* \* \*

[See Prior Text in A.2-B.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:723 (July 1992), LR 23:\*\*.

**Subchapter G. Financial Requirements****§4403. Financial Assurance for Closure**

By the effective date of these regulations an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in LAC 33:V.4403.A-E.

\* \* \*

[See Prior Text in A-E.1.a]

i. two of the following three ratios: ~~either~~ a ratio of total liabilities to net worth less than ~~1.5~~ 2.0; ~~or~~ a ratio of the sum of net income plus depreciation, depletion, and amortization ~~minus \$10 million,~~ to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth ~~greater than the sum~~ each at least six times the sum of the current closure and post-closure cost estimates and ~~any other obligations covered by a financial test plus \$10 million~~ the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

~~iii~~ iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test — the current plugging and abandonment cost estimates.

\* \* \*

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth greater than at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus \$10 million — the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

~~iii~~ iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test — the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in ~~LAC 33:V.4403~~ Subsection E.1 of this Section refers to the cost estimates required to be shown in ~~Paragraphs 1-7~~ 4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

\* \* \*

[See Prior Text in E.3-E.10.a.iii]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of ~~LAC 33:V.4403~~ this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, ~~and insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined~~. The mechanisms must be as specified in ~~LAC 33:V.4403~~ Subsections A-F of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other

mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

\* \* \*

[See Prior Text in G - H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:219 (March 1990), LR 18:723 (July 1992), LR 23:\*\*\*

#### **§4407. Financial Assurance for Post-closure Care**

An owner or operator of each hazardous waste disposal unit must establish financial assurance for post-closure care of the facility. He must choose from the options as specified in ~~LAC 33:V.4407.~~ Subsections A-E of this Section.

\* \* \*

[See Prior Text in A-E.1.a]

i. two of the following three ratios: ~~either~~ a ratio of total liabilities to net worth less than ~~1.5, 2.0; or~~ a ratio of the sum of net income plus depreciation, depletion, and amortization, ~~minus \$10 million,~~ to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure costs estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus of at least \$10 million; and

~~iii~~ iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test the current plugging and abandonment cost estimates.

\* \* \*

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth greater than at least six times the sum of the current closure and post-closure cost estimates

and ~~any other obligations covered by a financial test plus \$10 million~~ the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

~~iii~~ iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in ~~LAC 33:V.4407. Subsection E.1 of this Section~~ refers to the cost estimates required to be shown in ~~Paragraphs 1-7~~ 4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

\* \* \*

[See Prior Text in E.3-E.11.c]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of ~~LAC 33:V.4407.F~~ this Subsection by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, ~~and insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined~~. The mechanisms must be as specified in ~~LAC 33:V.4407. Subsections A, B, C, and D, E, and F, of this Section,~~ Subsections A, B, C, and D, of this Section, respectively, except that it is the combination of mechanisms rather than the single mechanism which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

G. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in ~~LAC 33:V.4407.G~~ this Subsection to meet the requirements of ~~LAC 33:V.4407.G~~ this Subsection for more than one facility. Evidence of financial assurance submitted to the administrative authority must include a list showing, for each

facility, the EPA identification number, name, address, and the amount of funds for post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that particular facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

\* \* \*

[See Prior Text in H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), LR 23:\*\*.

#### **§4411. Liability Requirements**

\* \* \*

[See Prior Text in A-F.1.a]

i. net working capital and tangible net worth ~~greater than the sum of~~ at least six times the amount of liability coverage to be demonstrated by this test ~~plus \$10 million~~; and

ii. tangible net worth of at least \$10 million; and

~~iii. assets located in the United States amounting to either (1) at least 90 percent of his total assets or (2) at least six times the sum of the amount of liability coverage and any other obligations covered by a financial~~ to be demonstrated by this test.

\* \* \*

[See Prior Text in F.1.b-F.1.b.i]

ii. tangible net worth of at least \$10 million; and

~~iii. tangible net worth greater than the sum of~~ at least six times the amount of liability coverage to be demonstrated by this test ~~plus \$10 million~~; and

~~iv. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the sum of the amount of liability coverage and any other~~

~~obligations covered by a financial~~ to be demonstrated by this  
test~~†.~~

\* \* \*

[See Prior Text in F.2-F.3]

a. A letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required.

\* \* \*

[See Prior Text in F.3.b-K]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:627 (May 1993), amended LR 23:\*\*.

## Title 33

## ENVIRONMENTAL QUALITY

## Part V. Hazardous Waste and Hazardous Materials

## Subpart 1. Department of Environmental Quality-Hazardous Waste

## Chapter 49. Lists of Hazardous Wastes

## §4901. Catagory I Hazardous Wastes

\* \* \*

[See Prior Text in A-B.3]

a. Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of ~~IAC 33:V.4901.~~ Subsections B.23.b and c of this Section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

\* \* \*

[See Prior Text in B.3.b.iv]

c. The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

- i. the name and address of the facility;
- ii. formulations previously used and the date on which their use ceased in each process at the plant;
- iii. formulations currently used in each process at the plant;
- iv. the equipment cleaning or replacement plan;
- v. the name and address of any persons who conducted the cleaning and replacement;
- vi. the dates on which cleaning and replacement were accomplished;
- vii. the dates of sampling and testing;
- viii. a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;
- ix. a description of the tests performed, the date the tests were performed, and the results of the tests;



x. the name and model numbers of the instrument(s) used in performing the tests;

xi. QA/OC documentation; and

xii. the following statement signed by the generator or his authorized representative:

"I certify under penalty of law that all process equipment required to be cleaned or replaced under LAC 33:V.4901.B was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

\* \* \*

[See Prior Text in C-G.Table 6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), LR 23:\*\*.